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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,076	01/26/2006	Ralf Wiedemann	102792-507(11270P4 US)	1082
27389 7590 02/04/2009 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022				
EXAMINER HECKERT, JASON MARK				
ART UNIT		PAPER NUMBER		
1792				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/560,076

Applicant(s)

WIEDEMANN ET AL.

Examiner

JASON HECKERT

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 12/09/05, 1/20/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is impossible for matter to exist in only two dimensions.

Therefore saying that the form is two-dimensional renders the claim indefinite.

3. Claim 39 provides for the use of the invention, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Claim 39 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1-6, 9-15, 37-39 rejected under 35 U.S.C. 102(b) as being anticipated by Fahnoe. Fahnoe discloses a detergent dispensing device comprising a body 10 for containing wash additives that has an open top (col. 2 lines 53-64) readable on an inlet, an outlet at the bottom, and means for closing the outlet. The means comprises a thermal bimetal cap 11 (claim 1) that is responsive to temperature change. The cap is a snap element. On one side of the snap element is a sealing member, or plug, 19. As shown in figures 2 and 3, one part of the snap elements is attached to a combination of items 12 and 13, which fix the snap element to the body. The other part of the snap element is attached to the sealing element 19, with peripheries that interact with the plug and device. Arm 13 and pivot 12 read on the pate and rod respectively. The rod 12 clearly has a terminal end that bonds to the snap elements like a flange (figures 2 and 3). Claims 38-39 regard intended use of the apparatus. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-15, 20-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Rodd et al. in view of Fahnoe. In one embodiment, Rodd et al. discloses a portable bulk detergent dispenser containing a detergent container 19, an outlet 28, a dosing area 20 readable on an auxiliary chamber, and a thermally responsive closure means (bimetal or wax) 23 with a piston or ram 25 (see figures 7 and 8). The dosing area operates in synchronization with the closure means. A linkage 21 is disposed between the auxiliary closure and main body closure. Rodd does not teach an opening for the inlet of wash liquor. Fahnoe teaches an opening for detergent input that is fully capable of also receiving wash water. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988). Such inlet also reads on a second linkage. Claims 7-9 regard properties of the metal that can be altered through routine experimentation. It is well settled that determination of optimum values of cause effective variables such as these process parameters is within the skill of one practicing the art. *In re Boesch*, 205 USPQ 215 (CCPA 1980). In regards to claims 9 and 11, changes in shape or form have been held

to be obvious. *In re Dailey* 149 USPQ 47, 50 (CCPA 1966). A the form of the bimetal element is not germane to patentability absent a showing of unexpected results. Rodd also teaches other embodiments responsive to other water conditions, such as pressure. Liquid or solid detergents can be used. Rodd discloses various means to control the amount of fluid that enters the auxiliary chamber, which is also readable on a collecting funnel. The auxiliary chamber has a drainage. The body of the device is a water resistant material. The combination of Rodd and Fahnoe, as stated previously, obviates including an opening. The entirety of Rodd OR Fahnoe can be considered a channel, and both obviate the use of solid or liquid detergents. Thus the inclusion of a detergent bar is not considered to be novel. The shape of the channel is not considered to be patentable, and Fahnoe shows it as being a tube with uniform bore. Furthermore, Rodd shows various tubes in his dispenser. It would have been obvious at the time of invention to modify Rodd and include an inlet, as this requires only routine skill and is obviated by the teachings of Fahnoe.

8. Claims 16-19 rejected under 35 U.S.C. 103(a) as being unpatentable over Fahnoe in view of Hattori. Fahnoe teaches the use of a bimetal snap element to control fluid flow in the detergent dispenser of a washing machine. He does not teach the use of two bimetal elements. Bimetal valves are common in the art of fluid flow, and are known to include two bimetal elements that interact. Hattori shows a bimetal valve with first and second bimetal discs (see claims 6, 33, and 39) that interact. Thus, such an arrangement was known at the time of invention, which allows response to multiple temperatures. Claims 18-19 regard properties of the metal that can be altered through

routine experimentation. The temperature is considered to be a cause effective variable. It is well settled that determination of optimum values of cause effective variables such as these process parameters is within the skill of one practicing the art. *In re Boesch*, 205 USPQ 215 (CCPA 1980). It would have been obvious to one of ordinary skill at the time of invention to use two bimetal elements, as taught by Hattori, for response to multiple temperature levels.

Conclusion

Examiner invites the applicant for a personal interview in order to discuss proposed amendments that can hasten prosecution.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HECKERT whose telephone number is (571)272-2702. The examiner can normally be reached on Mon. to Friday, 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/
Supervisory Patent Examiner, Art
Unit 1792

JMH